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not apply to detention as a result of ordinary legal proceedings, nor to restraints by persons acting in defiance of law. *Finlay v. Liverpool, etc. Co.*, 23 L. T. R. 251; *Nesbitt v. Lushington*, 4 T. R. 783. See *Northern Pacific Ry. Co. v. Am. Trading Co.*, 195 U. S. 439, 468. The principal case probably extends the meaning of "restraints of princes," but the decision is not without the support of well-considered *dicta*. See *Sanday & Co. v. British, etc. Marine Ins. Co.* [1915] 2 K. B. 781, 800, 827; *Nobel's Explosives Co. v. Jenkins & Co.* [1896] 2 Q. B. 326, 331; *Rodoconachi v. Elliott*, L. R. 9 C. P. 518, 522. But see *Bradlie v. Maryland Ins. Co.*, 12 Pet. (U. S.) 378, 402; *Miller v. Law Accident Ins. Co.* [1903] 1 K. B. 712, 721. See also SCRUTTON, CHARTERPARTIES AND BILLS OF LADING, 7 ed., 207.

DEATH BY WRONGFUL ACT — STATUTORY LIABILITY IN GENERAL — LIABILITY FOR FAILURE TO PERFORM A CONTRACT TO HEAT PREMISES. — The defendant, as part of his contract with a tenant, agreed to keep the premises heated. He failed to do so, and the tenant contracted a severe cold which, it is alleged, later resulted in his death. A statute allows an action for the benefit of the next of kin of a deceased person whose death was caused by the wrongful acts or omissions of another (1913 MINN. GEN. STAT. § 8175). *Held*, that the plaintiff may recover. *Keiper v. Anderson*, 165 N. W. 237 (Minn.).

Tort will lie for negligent misfeasance in the performance of a thing agreed upon. *Flint Mfg. Co. v. Beckett*, 167 Ind. 491, 79 N. E. 503; *Stock v. Boston*, 149 Mass. 410, 21 N. E. 871. Generally it will not lie for negligent nonfeasance in the performance of a contract. *Samuel v. Novak*, 99 Md. 558, 58 Atl. 19; *Shick v. Fleischhauer*, 26 App. Div. (N. Y.) 210. Here it might be argued that the defendant's only breach was a failure to act. But the essence of the transaction was that the defendant undertook to keep his tenant warm, and so negligently performed his agreement that injury resulted. Bearing out this view is a previous Minnesota case that is very much in point. *Glidden v. Goodfellow*, 124 Minn. 101, 144 N. W. 428. It would seem to follow that plaintiff may recover, for although the act seems clearly to be a "death" statute, and not a "survival" statute, the court construes it as the latter. See 15 HARV. L. REV. 854; 30 HARV. L. REV. 396. But even under a death statute, plaintiff should recover, provided the element of damage is present. Under such statutes, the cause of action arises from a tort to the plaintiffs. See 15 HARV. L. REV. 854. The principal case would satisfy that requirement; it is well settled that a wrong to one person may arise out of breach of a contract with another. *Cf. Rex v. Pittwood*, 19 Times L. Rep. 37. Under a death statute, it is immaterial whether the deceased would have had a cause of action had he survived.

EMINENT DOMAIN — RIGHT TO ABANDON PROCEEDINGS. — A water company instituted proceedings to condemn land, and, after damages had been assessed and the assessment confirmed, attempted to abandon the proceedings. *Held*, that the company cannot withdraw. *York Shore Water Co. v. Cord*, 102 Atl. 321 (Me.).

For a discussion of this case, see Notes, page 791.

EVIDENCE — GENERAL PRINCIPLES AND RULES OF EXCLUSION — ADMISSIBILITY OF TELEPHONE CONVERSATIONS. — The bailee of a horse, in attempting to establish that the owner had been notified before the expense was incurred, offered the veterinary as a witness to testify to a conversation by telephone with one whose voice the witness did not recognize but who said he was the servant of the owner. *Held*, that the alleged conversation was not admissible. *Smarak v. Segusse*, 102 Atl. 354 (N. J.).

For a discussion of this case, see Notes, page 794.